

TESTIMONY OF TOM MELIUS, ASSISTANT DIRECTOR FOR EXTERNAL AFFAIRS, U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE U.S. HOUSE OF REPRESENTATIVES GOVERNMENT REFORM COMMITTEE, SUBCOMMITTEE ON REGULATORY AFFAIRS, REGARDING IMPROVING INFORMATION QUALITY IN THE FEDERAL GOVERNMENT

July 20, 2005

Good morning. I am Tom Melius, Assistant Director for External Affairs for the U.S. Fish and Wildlife Service (Service). Thank you for the opportunity to testify today regarding the Service's implementation of the Information Quality Act, as mandated by Section 515(a) of the Treasury and General Government Appropriations Act of 2001.

The goal of the Information Quality Act (IQA) is to ensure and maximize the quality, objectivity, utility, and integrity of information disseminated by Federal agencies. The Office of Management and Budget (OMB) published final government-wide guidelines for IQA implementation in 2001 and 2002. In accordance with these guidelines, the Service published its own guidelines describing how the agency would implement IQA within its programs. The Service appreciates and fully supports the IQA's goal of ensuring the quality of scientific information used by government agencies, and of making this information transparent for the public. Science is the foundation for all of our conservation efforts and the Service has a long and proud tradition of scientific excellence.

Before discussing how IQA implementation has worked in the Service, I would like to clarify where in our organization we have placed IQA responsibility. Many agencies have designated the Chief Information Officer (CIO) as the official responsible for IQA, and indeed this is standard in the Department of the Interior. Under the Service's guidelines, the Assistant Director for External Affairs is the responsible official for implementing IQA. The Service implemented IQA in this way because in 2002 we did not have a CIO, and because at that time the Service's research coordinator reported to External Affairs. Currently, the Service's Science Advisor, who reports to the Director, is responsible for handling appeals of IQA decisions rendered by the Assistant Director for External Affairs. Since a CIO has recently been designated within the Service, it is our intention to reassign responsibility for administering IQA to the new CIO so that we will be in line with Department of the Interior practice.

Affected persons or organizations may challenge the quality of information disseminated by the Service under IQA guidelines by filing a formal request for correction with the agency. Upon receipt, these requests are reviewed for appropriateness under OMB's government-wide, Department of the Interior, and Service guidance. Once a request is determined to be appropriate under the IQA, it is routed to the program or Regional office responsible for the information being challenged. After researching the issue and developing a response, the reviewing office submits its decision to the Assistant Director for External Affairs in Washington, D.C. The Assistant Director for External Affairs then coordinates with Departmental personnel to ensure the accuracy of the response, and if deemed accurate, signs the document and delivers it to the

requester. Responses are issued within 45 business days of receipt of the original request (unless an extension is needed for additional review, in which case the Service informs the requester of the extension and the reasons why it is needed).

If a request is approved, the Service will take corrective action. If a request is denied, the requester has 15 business days to appeal. Appeals are forwarded to the Service Science Advisor, who convenes a team of program or Regional personnel with knowledge of the information in question. The team develops a recommendation which is considered by the Director of the U.S. Fish and Wildlife Service, who makes the final decision on the appeal. Final drafts of all responses and appeals under the IQA are reviewed by OMB in its IQA oversight role to ensure consistent implementation across the federal government.

The majority of our IQA requests have involved endangered or threatened species, or candidates for listing. In addition, several requests have been filed during a decision-making process where the requester has submitted comments during the comment period on a proposed decision and concurrently filed an IQA request.

In Fiscal Year 2003, the Service received six requests for correction under the IQA. These included:

- A request from Atlantic Salmon of Maine relating to Service biological opinions to other Federal agencies on issues pertaining to Atlantic Salmon in Maine;
- A request from the U.S. Air Force relating to the Service's proposed rule to list the slickspot peppergrass as an endangered species;
- A request from a ranching operation relating to information in the recovery plan and proposed critical habitat designation for the cactus ferruginous pygmy owl in Arizona;
- A request from the National Association of Homebuilders, also on the proposed critical habitat for the pygmy owl;
- A request from the Public Employees for Environmental Responsibility (PEER) relating to the Service's 90-day finding on a petition to list the Tri-State Area Flocks of the Rocky Mountain Population of trumpeter swans; and,
- A request from the Florida Marine Contractors Service relating to the Service's proposed designation of manatee protection areas in Florida.

Of these six requests, we considered that five met the standards for consideration under the IQA. The manatee request was submitted as a part of public comments on the proposed rule and did not include the information required under our IQA guidelines. We responded to this request within the context of the responses to public comments on the proposed rule. We responded to the other five requests within our IQA process. One of these, the trumpeter swan, ultimately went through a full appeals process which involved reconsideration of the request by an independent panel led by the Service's Science Advisor.

In Fiscal Year 2004, the Service received five requests for correction as follows:

- A request from PEER relating to information in a number of documents concerning the Florida panther;

- A request from Union Electric Company regarding relicensing of the Osage Hydroelectric Project in Missouri;
- A request from a private citizen relating to a petition the Service received from non-government organizations to list the Sand Mountain blue butterfly as endangered or threatened;
- A request from Partnerships for the West, a public interest group, relating to a number of documents pertaining to the status of the Greater Sage Grouse; and,
- A request from the Owyhee Counter Board of Commissioners in Idaho also relating to information pertaining to the sage grouse.

For the FY 2004 requests, we considered that two of these requests were not appropriate for consideration under the IQA guidelines. The Union Electric request challenged information that was part of an administrative adjudication, and not eligible for consideration under OMB's government-wide guidelines. The Sand Mountain blue butterfly request challenged a petition that had not been disseminated by the Service nor adopted as "sponsored information" by the Service. The remaining three requests met the standard for consideration under IQA. Of these, we responded to PEER on the Florida panther, and also responded to the requesters on the two sage grouse challenges just last week. PEER requested reconsideration of our response on the panther, and this also went through the full appeal process with reconsideration by an independent panel.

We have not yet received any IQA requests for correction in FY 2005.

Based on our experience with the IQA thus far, we offer these observations:

We believe that the IQA has had beneficial effects on the way the Service considers the use of scientific information in decision making. Two examples that come to mind are the listing of the slickspot peppergrass and the biological opinions on the Florida panther. In the case of the slickspot peppergrass, as a result of an IQA petition, the Service reviewed the science used in the proposed listing, and that review influenced the agency's decision not to list the plant. In the case of the Florida panther, the IQA process identified areas where the Service had not updated scientific information on the Florida panther, information that we acknowledged was evolving. As a result, the Service accelerated its schedule for several corrective actions, which included updating panther-related provisions of the Multi-Species Recovery plan to incorporate appropriate recommendations of the Science Review Team, and making this available for public comment. The Service ended further dissemination of the draft Landscape Conservation Strategy and continued its work to address all peer review comments as well as recommendations made by the Scientific Review Team. The Service also took necessary steps to correct Service files on several biological opinions.

We have found that handling the requests for corrections under IQA can be complex. Certainly we have learned that our own guidelines, which allow us only 45 business days for response to a request for correction, need to be amended. We are currently considering the best method to provide additional time for review and response while still responding to the public in a timely manner. Any new guidelines will be announced in the Federal Register.

Fulfilling our responsibilities under the IQA in a manner that is consistent with our legal obligations under the Endangered Species Act (ESA) and the Administrative Procedures Act (APA) has presented some unique challenges. Our current approach to IQA requests which are received during a rulemaking but after the close of a comment period is to prepare our response prior to the final rulemaking, with release of a written response after the final rule is published. In such a case, all the issues raised in the IQA petition are addressed separately from the rulemaking, and a separate response is prepared prior to the publication of the rule. The responses to the questions in the petition do, however, inform the rulemaking process. This approach has served to raise issues that may have been overlooked in the more general rulemaking process and, we believe, improved our final products.

In general, the Service believes the IQA process is working and provides a benefit to the public. We will continue to improve the process as we gain experience with responding to IQA requests.

This concludes my testimony. I will be pleased to respond to any questions the Subcommittee may have.